

REMARKS

This Response is being filed in response to the Final Office Action mailed March 19, 2009, which has been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-8 remain in this application, where claims 9-19 had been previously canceled without prejudice. Claim 1 is independent.

In the Office Action, claims 1-8 are rejected under 35 U.S.C. §112, first paragraph. Applicants respectfully traverse this rejection. However, in the interest of advancing prosecution, claim 1 has been amended to more closely track the language recited on page 6, lines 20-27 of the specification. It is respectfully submitted that this rejection of claims 1-8 has been overcome. Accordingly, withdrawal of this rejection is respectfully requested.

In the Office Action, claims 1-8 are rejected under the judicially created doctrine of obviousness-type double patenting as

being unpatentable over U.S. Patent No. 6,427,580 (Benedictus).

The Examiner indicated that a terminal disclaimer may be used to overcome this rejection. This rejection is respectfully traversed, particularly in view of the present amendments to the claims.

However, it is respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

In the Office Action, claims 1-8 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 4,574,185 (Wenger). It is respectfully submitted that claims 1-8 are patentable over Wenger for at least the following reasons.

Wenger is directed to a deep fryer having an oil tank, where an immersed heater 3 is controlled by a thermostat 2 which disconnects the heater 3 when the oil reaches a given temperature.

It is respectfully submitted that Wenger does not teach or suggest the present invention as recited in independent claim 1, amongst other patentable elements, requires (illustrative emphasis provided):

the control system being further adapted for

generating one command signal of the first food lowering command signal and the second food lowering command signal based on steepness of a temperature rise over time of the temperature and a desired time between generation of the one command signal and when the upper limit value of the sensed temperature would be reached if no food is lowered into the cooking medium.

These features are nowhere disclosed or suggested in Wenger. Rather, Wenger merely discloses to generate a bell or light (see column 1, lines 59-60) "indicating to the user that the operating temperature is going to be reached imminently and that he can immerse the basket." (Column 2, lines 29-30) As recited on column 2, lines 55-56, the light "lights up about 15 seconds before the disconnecting of the heater." (See also column 3, lines 23-27)

In Wenger, it is the user who lowers or immerses the basket into the oil in response to a light or bell. Wenger simple does not disclose or suggest "generating one command signal of the first food lowering command signal and the second food lowering command signal based on steepness of a temperature rise over time of the temperature and a desired time between generation of the one command signal and when the upper limit value of the sensed temperature would be reached if no food is lowered into the cooking

medium," as recited in independent claim 1. Such features are not mere design choices, as alleged on pages 2-3 of the Office Action. Rather, such features provide substantial benefits, such as providing enhanced cooking, reducing the lag between the temperature drop associated with the lowering of food in the cooking medium, and/or establishing the maximum heat flow from the heater to the cooking medium while avoiding or at least reducing the risk of temperature overshoot due to food not being lowered into the cooking medium in good time.

Accordingly, it is respectfully submitted that independent claim 1 is allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-8 should also be allowed at least based on their dependence from independent claim 1, as well as for the separately patentable elements contained in each of said claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

For example, Wenger does not teach or suggest the present invention as recited in claim 3, which recites (illustrative emphasis provided):

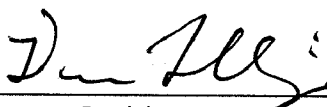
a user interface operatively connected to the control system for setting a boost condition wherein, in said boost condition, said upper limit value of the sensed temperature and said second predetermined sensed temperature below said upper limit value are temporarily increased.

Instead of a boost condition, Wenger discloses that "the maximum temperature is lowered, which improves the quality of the fried food." (Column 1, lines 56-58) That is, Wenger lowers the maximum temperature instead of increasing it, thus teaching away from the present invention as recited in claim 3.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By 
Dicran Halajian, Reg. 39,703
Attorney for Applicant(s)
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THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101